



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 21, 1996

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
City Hall
Dallas, Texas 75201

OR96-0376

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39124.

The City of Dallas (the "city") received several open records requests for various records pertaining to a fatal automobile accident in which a city police officer was involved. You state that the city has released some of the requested information. You contend, however, that witness statements taken at the scene of the accident and photographs of the two automobiles involved are excepted from public disclosure under the "law-enforcement exception," 552.108 of the Government Code and the "litigation exception," section 552.103 of the Government Code.¹

¹You also contend that the requested information is confidential in accordance with the Texas Supreme Court's holding in *Hobson v. Moore*, 734 S.W.2d 340, 341 (Tex. 1987). However, the *Hobson* case has no bearing on whether information is subject to public disclosure under the Open Records Act. In *Hobson*, the court cited the predecessor statute to section 552.108 by analogy and recognized a law enforcement investigation privilege from civil discovery. This office, in Attorney General Opinion JM-1048 (1989), cited *Hobson* and its progeny but noted that neither *Hobson* nor any other reported Texas case directly addressed whether the act's exceptions created new privileges from discovery. Subsequent to the court's holding in *Hobson*, the Seventy-first Texas Legislature added subsection (f) to section 14 of former article 6252-17a (now found at Gov't Code § 552.005):

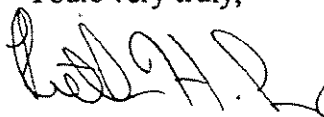
(f) This Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure. The exceptions from disclosure under this Act do not create new privileges from discovery.

Acts 1989, 71st Leg., ch. 1248, § 18, at 5029. This amendment reflects a legislative overruling of the court's dicta that the act's exceptions create privileges from discovery.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Traditionally, when applying section 552.108, our office has distinguished between cases that are under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are under active investigation, section 552.108 excepts from required public disclosure all information gathered by the police except for the "front page offense report information." *See generally* Open Records Decision No. 127 (1976). You indicate that this is an active investigation. Accordingly, the city must release the "public" information contained in the offense report in accordance with Open Records Decision No. 127 (1976). The city may withhold the witness statements and photographs pursuant to section 552.108 during the pendency of the criminal investigation.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/RWP/ch

Ref.: ID# 39124

Enclosures: Submitted documents and photographs

cc: Ms. Anita Vanetti
WFAA-TV
Communications Center
606 Young Street
Dallas, Texas 75202-4810
(w/o enclosures)

²Because we resolve your request under section 552.108, we need not address your contentions under section 552.103.

Mr. Windle Turley
1000 University Tower
6440 North Central Expressway
Dallas, Texas 75206
(w/o enclosures)

Mr. John Howie
Howie & Sweeney, L.L.P.
Suite 1440
2911 Turtle Creek Boulevard
Dallas, Texas 75219
(w/o enclosures)